



Radiocommunications (Spectrum Licence Allocation—2 GHz Band) Determination 2000

The AUSTRALIAN COMMUNICATIONS AUTHORITY, under sections 60 and 294 of the *Radiocommunications Act 1992*, determines the following procedures to be applied in allocating spectrum licences by auction and, in certain circumstances, at a pre-determined price.

Dated 4 December 2000

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Chair

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Radiocommunications (Spectrum Licence Allocation—2 GHz Band) Determination 2000

made under the

Radiocommunications Act 1992

Contents

	Page
Summary of Allocation System	7
Part 1 Introduction	9
1.1 Name of determination	9
1.2 Commencement	9
1.3 Purpose of determination	9
1.4 Definitions	9
1.5 Approval of forms	13
1.6 Auction manager	13
1.7 Ways in which the ACA gives information	13
1.8 Communicating with ACA	13

	Page
1.9	Method of payment of monies to ACA 14
Part 1A—Limits on Allocations of Spectrum	
	Division 1—Preliminary 16
1A.1	Purpose of Part 16
	Division 2—The allocation limits 17
1A.2	Imposition of allocation limits 17
1A.2A	Bidding not to exceed limits 17
1A.2B	Consequences of exclusion 18
	Division 3—Matters relevant to considering whether applicants associated 19
1A.3	Matters relevant to considering whether applicants associated 19
	Division 4—Procedures before auction 20
1A.4	ACA to send applications to ACCC 20
1A.5	Applicants to provide statutory declarations 20
1A.6	Exclusion of applicants because of failure to make statutory declaration 20
1A.7	Consequences of exclusion 21
1A.8	Options available to associated applicants 21
1A.9	Consequences of withdrawal 22
1A.10	Consequences of applicants choosing not to withdraw 22
1A.11	Making a new application 22
1A.12	New application—limit on acceptance 23
1A.13	Designation of applicants as associated applicants 23
1A.14	Consequences of designation as associated applicants 24
	Division 5—Procedures during auction 26
1A.15	Detection of associated applicants during auction 26
1A.16	Exclusion of applicants because of failure to make statutory declaration 26
1A.17	Consequences of exclusion 26
1A.18	Designation of associated applicants during auction 27
1A.19	Consequences of designation as associated applicants 27

	Page	
1A.20	Effect of designation of associated applicants on bidding	28
1A.21	Telling other applicants of designation of associated applicants	29
	Division 6—Procedures after auction	30
1A.22	Successful applicants to make statutory declarations	30
1A.23	Exclusion of applicants because of failure to make statutory declaration	30
1A.24	Consequences of exclusion	30
1A.25	Designation of associated applicants after auction	31
1A.26	Consequences of designation as associated applicants	31
1A.27	Unallocated lots	32
1A.28	Moneys payable by a successful applicant	32
	Division 7—General	34
1A.29	Review	34
1A.30	Definitions of terms used in this Part	34
Part 2	Preparing for the auction	37
	Division 1 Application and registration	37
2.1	Entry fee and eligibility payment	37
2.2	Publication of notice by ACA	37
2.3	Applicant Information Package	38
2.4	Applications	39
2.5	Lodging of applications	39
2.5A	Initial eligibility	40
2.6	Initial eligibility payment	40
2.7	Calculating the eligibility payment	41
2.8	Deed of Financial Security or performance payment	41
2.9	Lodging of power of attorney	42
2.10	Failure to comply with requirements concerning Original Documents and Deed of Financial Security	42
2.11	Performance payment	42
2.12	Forfeiture and refund of secured monies	43
2.12A	Withdrawal of applicant	43

		Page
2.13	Register of applicants	44
2.14	Registration of applicants	45
2.15	Publication of bidder identification numbers	46
2.16	Preparation for bidding	46
	Division 2 Things the ACA and the auction manager must do before the auction	47
2.17	Starting bids and increments	47
2.18	Stages of auction, eligibility percentage, waivers and first round	47
Part 3	Allocation for a pre-determined price or a negotiated price	48
3.1	Allocation for a pre-determined price without an auction	48
3.2	The pre-determined price	48
3.2A	ACA must have regard to applicants' requirements	48
3.3	Offer of licence	49
3.4	Payment of balance of pre-determined price	49
3.5	Allocation if some offers refused	50
3.5A	Refunds if allocation terminated	50
3.7	Default	50
Part 4	The auction	51
	Division 1 Auction arrangements	51
4.1	Auction procedure	51
4.2	Rounds of an auction	51
4.3	Schedule for a round	52
4.4	Rounds on a day	52
4.5	Recess days	53
4.6	Auction manager may vary the length of the bidding or results period	53
4.7	Movement to next stage of auction	54
	Division 2 Bidding and taking part in the auction	55
4.8	Ways of taking part in the auction	55
4.9	Electronic bidding procedure	55
4.10	Emergency telephone bidding procedure	56
4.11	Identification of registered applicants	57

	Page	
4.12	Starting and minimum bids	57
4.13	Changing starting bids	58
4.13A	Changing minimum bids	58
4.14	Automatic re-bidding	58
4.15	All lots on offer simultaneously	60
4.16	General rules about bidding	61
4.17	Eligibility bidding cap	61
4.18	Bidding activity targets	62
4.19	Loss of eligibility	62
4.20	Waiver	63
4.21	Withdrawal of bids	64
4.22	Loss of eligibility on withdrawal	64
4.23	Withdrawal penalty	Error! Bookmark not defined.
4.24	Suspension of an applicant	66
4.25	Further Deed of Financial Security or additional performance payment	66
4.26	Consequences of exclusion	68
	Division 3 Bringing the auction to an end	70
4.27	Suspension or cancellation of auction	70
4.28	Closing of auction	71
Part 5	After the auction	73
5.1	Allocation of licence to highest bidder	73
5.2	Calculation of balance of bid price	73
5.3	Payment of balance of bid price	73
5.4	Default by successful applicant	74
5.5	Allocation of defaulted lots	75
5.6	Refunds to unsuccessful applicants	75
Part 6	Miscellaneous	76
6.1	Unallocated lots	76
6.2	Liability of ACA	76
6.3	Recovery of damages by ACA	76
6.4	ACA may obtain information from applicants	76
6.5	Giving of information by ACA	77
6.6	Information provided by applicant	77
6.7	Refunds of payments under Deed of Financial Security	77

	Page
Schedule 1 Procedures for bid transmission (including automatic re-bids and withdrawal of bids) and authentication	78

Summary of Allocation System

Note This summary is intended to give an overview of the allocation system. Readers who want to fully understand how the system works should study the entire determination in detail.

This determination makes provision for the allocation of parts of the spectrum that have been identified as being available for re-allocation under section 153B of the *Radiocommunications Act 1992 (the Act)*. The ACA proposes to allocate spectrum licences by a simultaneous ascending bid multiple round auction of spectrum allocation lots that then become the subject of spectrum licences. If applicants' needs in all areas can be met without going to auction, the licences will be offered for a pre-determined price. Details of the overall scheme for allocation and issue of spectrum licences are set out in the relevant Marketing Plan prepared by the ACA under section 39A of the Act.

Each lot covers an area and a frequency band — for details, see the Marketing Plan. Each lot has a lot rating reflecting its relative value, determined by the ACA. People wishing to bid are asked to nominate an aggregate amount of lot ratings for the lots they wish to acquire, and this will be regarded as their "eligibility" in the auction. People wishing to obtain a licence by this process must register, pay an entry fee and make a refundable proportional eligibility payment based on the eligibility they nominate. The eligibility payment is held against payment of bid withdrawal penalties as a means of discouraging applicants from abusing the auction process. A further Deed of Financial Security or an additional performance payment may also be required during the course of the auction if the amount secured under the Deed, or paid as a performance payment, falls below 10 % of the total of high bids of an applicant.

The auction will be conducted electronically. Registered applicants may bid on any number of lots, in any combination, provided that their bidding activity does not exceed their eligibility. Applicants may nominate to be eligible for all lots (within the bidding limits), but they must make the necessary eligibility payment. Applicants interested in specific areas, or particular bands, need only make a sufficient eligibility payment to cover these.

Bidding will take place over several rounds with the results of each round being notified to registered applicants by the ACA. Registered applicants may withdraw bids during the round, but will forfeit some or all of their eligibility payment if the lot ultimately sells for less than the bid that was withdrawn.

Registered applicants will be subject to activity requirements that require them to be active on a percentage of their eligibility. This percentage increases in stages during the auction. Registered applicants not meeting the activity requirements will have their eligibility proportionally reduced.

At the end of the allocation process, if all necessary pre-conditions are fulfilled, the ACA will aggregate the lots into licences to be issued to the successful applicants.

application closing date means the date and time mentioned as the date by which applications must be made in the notice published under subsection 2.2 (1).

application documents means a completed application form and a completed Deed of Acknowledgment.

application form means the document approved by the ACA under paragraph 1.5 (1) (a).

area means the geographic area under the Marketing Plan.

auction means an auction held by the ACA in accordance with this determination to allocate spectrum lots.

auction centre means the auction centre located at the Canberra office of the ACA.

auction computer system means the computer system operated by the ACA for the purpose of an auction.

auction manager means the person appointed under section 1.6.

balance of the bid price means the amount worked out in accordance with section 5.2.

balance of the pre-determined price means the amount worked out in accordance with section 3.2.

bank transfer, for a payment, means making the payment by electronic transfer.

bidder identification number means the number assigned to an applicant by the ACA under paragraph 2.14 (2) (a).

bidding instruction means:

- (a) a bid on a lot; or
- (b) an automatic re-bid on a lot; or
- (c) a bid withdrawal on a lot; or
- (d) the exercise of a waiver; or
- (e) an instruction to the auction manager not to apply the automatic waiver.

Chair means the Chair of the ACA.

Deed of Acknowledgment means the document approved by the ACA under paragraph 1.5 (1) (c).

Deed of Financial Security means the document approved by the ACA under paragraph 1.5 (1) (b).

eligibility, for a registered applicant, means the registered applicant's initial eligibility as varied during the auction.

eligibility payment means the eligibility payment worked out under section 2.7.

eligibility payment date means the date and time mentioned as the date by which eligibility payments must be made in the notice published under subsection 2.2 (1).

entry fee means the entry fee payable by an applicant.

high bid, for a round, means the highest bid made on the lot in the bidding round or the bid taken to be the high bid under subsection 4.14 (4).

initial eligibility means:

- (a) an applicant's initial eligibility nominated under subsection 2.5A (1); or
- (b) if that eligibility is changed under subsection 2.5A (4), the changed eligibility.

lot means a part of the spectrum identified as a lot by the ACA in the Marketing Plan.

lot rating has the meaning given by the Marketing Plan.

Marketing Plan, for the auction of part of the spectrum, means the Marketing Plan prepared by the ACA for issuing spectrum licences for that part of the spectrum.

Note Copies of the Marketing Plan are available from the ACA.

performance payment in relation to an applicant means monies given to the ACA by that applicant under section 2.11.

pre-determined price, for a licence for a lot, means the price, determined under section 3.2, of the licence for the lot.

refundable performance payment in relation to an applicant means any monies given to the ACA by the applicant as a performance payment or additional performance payment, and any monies unconditionally paid to the ACA at the discretion of the Promisor, under a Deed of Financial Security that is given to the ACA by the applicant under section 2.8.

register means the register of applicants maintained by the ACA under section 2.13.

registered applicant means an applicant registered under section 2.14.

stage means a group of successive rounds of an auction to which the same percentage of eligibility, fixed under paragraph 2.18 (b), applies.

starting bid has the meaning given by section 2.17.

successful applicant has the meaning given by section 5.1.

working day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Note The following terms, used in this determination, are defined in the Act and have the meanings given to them by that Act:

ACA	spectrum
frequency band	spectrum licence.
marketing plan	

- (2) In this determination:
- (a) a reference to time is a reference to that time in the Australian Capital Territory; and
 - (b) a reference to an amount of money is a reference to that amount in Australian currency; and
 - (c) the range of numbers that identifies a frequency band includes the higher, but not the lower, number.
- (3) If a number worked out in accordance with this determination is not a whole number:
- (a) the number is to be rounded to the nearest whole number; and
 - (b) a number with 5 in the first decimal place is to be rounded up to the nearest whole number.
- (4) A registered applicant is active on a lot in a round if:
- (a) for a round to which the starting bid applies — the applicant makes a bid that equals or exceeds the starting bid; and
 - (b) for any other round:
 - (i) the applicant makes a bid that equals or exceeds the minimum bid on the lot worked out in accordance with section 4.12; or

- (ii) the applicant holds the high bid on the lot from the previous round and does not withdraw that high bid in the current round.

1.5 Approval of forms

- (1) The ACA must, by writing, approve the following documents:
 - (a) an application form;
 - (b) a Deed of Financial Security that complies with section 2.8;
 - (c) a Deed of Acknowledgment, that includes a statement to the effect that the applicant agrees, if successful in respect of a lot, to pay the ACA the balance of the bid price for the lot as required by section 5.3.
- (2) The ACA may approve more than 1 form of a document.

1.6 Auction manager

The ACA must, by writing, appoint a person (the *auction manager*) to manage an auction.

1.7 Ways in which the ACA gives information

- (1) The ACA may give any information or documents to a person under this determination:
 - (a) by letter; or
 - (b) by telephone; or
 - (c) by fax; or
 - (d) by email.
- (2) The ACA may make information available to a person:
 - (a) if the person is using the auction computer system — by making the information available on the system; or
 - (b) by publishing the information on the internet.

1.8 Communicating with ACA

Once an auction has started, a form or notice required to be given to the ACA in relation to the auction must be given by fax to a number shown

in the Applicant Information Package as the number for giving notices by fax.

Note Bidding must, except in emergencies, be done electronically: see section 4.8.

1.9 Method of payment of monies to ACA

- (1) All payments to the ACA must be made in Australian currency.
- (2) Monies due to the ACA for the following purposes must be paid by the date required by this determination and in accordance with this determination:
 - (a) entry fee;
 - (b) eligibility payment;
 - (c) the performance payment;
 - (d) any additional performance payment as required by section 4.25;
 - (e) 10% of the balance of the bid price;
 - (f) the remainder of the balance of the bid price;
 - (g) the balance of the pre-determined price.
- (3) Monies due to the ACA for any of the purposes set out in subsection (2) must be paid:
 - (a) by bank cheque; or
 - (b) by bank transfer.
- (4) If a payment is required to be made by a specific date, it is sufficient if, by that date, that either:
 - (a) the applicant gives the ACA a bank cheque for the amount of the payment; or
 - (b) if paying by bank transfer, the applicant:
 - (i) does everything necessary to make the payment; and
 - (ii) gives the ACA evidence that the payment has been made.
- (5) A payment by bank transfer must be paid into the ACA's bank account, details of which are as follows:
 - (a) Bank — Reserve Bank of Australia;

- (b) Branch — Canberra City;
 - (c) BSB number — 092-009;
 - (d) Account number — 92276-5;
 - (e) Account name — Australian Communications Authority Clearing Account.
- (6) A payment by bank transfer must be received in the ACA's bank account within 5 working days after the required date. If it is not, the person's application ceases to have effect and the person is not entitled to take part in the auction or to be allocated a licence.
- (7) The applicant must pay all bank charges and Government duties imposed on a payment, and a payment will not be regarded as having been made unless the full amount net of those charges is received by the ACA.

Part 1A—Limits on Allocations of Spectrum

Division 1—Preliminary

1A.1 Purpose of Part

The purpose of this Part is:

- (a) to impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under this determination, may be used by:
 - (i) a person; or
 - (ii) a specified group of persons; and
- (b) to determine procedures to ensure those limits are not exceeded.

Notes:

1. The Minister has given a written direction to the ACA under subsection 60(10) of the Act about the exercise of the ACA's power to determine procedures to be applied in allocating spectrum licences for imposing limits on the aggregate parts of the spectrum that may be used by a person or specified group of persons.

2. The following terms used in this Part are defined in section 1A.30 at the end of this Part:

- associate
- relevant agreement
- specified group of persons.

3. Other terms used in this Part are defined in section 1.4.

Division 2—The allocation limits

1A.2 Imposition of allocation limits

- (1) This section imposes the limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under this determination, may be used by particular classes of persons.
- (2) No person or specified group of persons may use more than:
 - (a) 5 MHz of spectrum in any of the designated areas described in Schedules 1 and 2 to the re-allocation declaration in the frequency bands 1900 MHz to 1920 MHz; and
 - (b) 15 MHz of spectrum in any of the designated areas described in Schedule 1 to the re-allocation declaration in the frequency bands 1920 MHz to 1980 MHz; and
 - (c) 15 MHz of spectrum in any of the designated areas described in Schedule 1 to the re-allocation declaration in the frequency bands 2110 MHz to 2170 MHz; and
 - (d) 15 MHz of spectrum in any of the designated areas described in Schedule 2 to the re-allocation declaration in the frequency bands 1935 MHz to 1980 MHz; and
 - (e) 15 MHz of spectrum in any of the designated areas described in Schedule 2 to the re-allocation declaration in the frequency bands 2125 MHz to 2170 MHz; and
 - (f) 10 MHz of spectrum in any of the designated areas described in Schedule 3 to the re-allocation declaration in the frequency bands 1960 MHz to 1980 MHz; and
 - (g) 10 MHz of spectrum in any of the designated areas described in Schedule 3 to the re-allocation declaration in the frequency bands 2150 MHz to 2170 MHz.

1A.2A Bidding not to exceed limits

- (1) A person or specified group of persons must not bid in a way that would be in breach of the limits in section 1A.2(2).

- (2) A person or specified group of persons who bids in breach of the limits will be excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.

1A.2B Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because of bidding in contravention of the limits in subsection 1A.2(2) (an *excluded applicant*) is not refundable.
- (2) The eligibility payment and refundable performance payments (if any) of an excluded applicant are refundable.
- (3) However, before refunding the eligibility payment of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.
- (4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the excluded applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment cannot be refunded until then.

Division 3—Matters relevant to considering whether applicants associated

1A.3 Matters relevant to considering whether applicants associated

When considering, for this Part, whether 2 or more applicants are associated, the ACA must have regard to:

- (a) statutory declarations made under section 1A.5, 1A.15 or 1A.22; and
- (b) any advice given by the ACCC in response to the material sent to it under section 1A.4; and
- (c) any other matter that the ACA considers relevant.

Division 4—Procedures before auction

1A.4 ACA to send applications to ACCC

The ACA must send a copy of each applicant's application documents to the ACCC within 5 working days of receiving them.

1A.5 Applicants to provide statutory declarations

- (1) No more than 10 working days after the application closing date, the ACA must:
 - (a) give each applicant details about the identity of all other applicants, and the persons those applicants have identified as their associates; and
 - (b) ask each applicant to make a statutory declaration stating whether the applicant is an associate of another applicant and, if so, giving details of the other applicant and the association.
- (2) The ACA must state a date, not less than 10 working days after the date of the request, by which the statutory declaration must be received by the ACA.
- (3) Each applicant must give the ACA a statutory declaration in accordance with this section.
- (4) A statutory declaration by an applicant that is a corporation must be made by a director of the corporation.

1A.6 Exclusion of applicants because of failure to make statutory declaration

An applicant who does not give the ACA a statutory declaration in accordance with section 1A.5 is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.

1A.7 Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because of failure to make a statutory declaration (an *excluded applicant*) is not refundable.
- (2) The eligibility payment and refundable performance payments (if any) of an excluded applicant are refundable.

1A.8 Options available to associated applicants

- (1) If the ACA considers that a group (an *applicant group*) of 2 or more applicants are associated with one another, the ACA must, in writing:
 - (a) tell each member why the ACA considers them to be associated; and
 - (b) tell the members of the group of the options available to them under subsection (2); and
 - (c) tell each member of the effect of section 1A.10.
- (2) The following options are available to the members of the group:
 - (a) withdrawing applications in accordance with subsection (3); or
 - (b) choosing not to withdraw.
- (3) For subsection (2), the following ways of withdrawing applications are permissible:
 - (a) withdrawal of applications by all members of the group (whether or not the group then takes advantage of section 1A.11 to make a new application); or
 - (b) withdrawal of applications by all but 1 member of the group.
- (4) Within 10 days of the ACA telling the members of the group the ACA considers them to be associated, the members must:
 - (a) tell the ACA, in writing, which option they propose to take; and
 - (b) if an application is to be made under section 1A.11, give the ACA a completed application form for the purposes of that section.

Note: By subsection 1A.11 (3), the Deed of Acknowledgment and the entry fee must accompany the completed application form.

1A.9 Consequences of withdrawal

If an applicant withdraws:

- (a) the application is of no effect; and
- (b) the applicant's entry fee is not refundable; and
- (c) the eligibility payment and refundable performance payments (if any) of the applicant are refundable.

1A.10 Consequences of applicants choosing not to withdraw

- (1) A decision of members of an applicant group not to withdraw has the following consequences:
 - (a) each member of the group (*member*) will be jointly and severally liable for all bids made using the common bidder identification number and encryption keys and transaction code keys allocated to members;
 - (b) spectrum licences will only be issued for lots on which the members are successful in accordance with an authority and direction, in the approved form, given jointly by the members to the ACA indicating how the spectrum won by them at auction is to be allocated between them, within the allocation limits;
 - (c) the applicant group will be taken to be a single applicant and dealt with as a single applicant under subsection 1A.14 (2).
- (2) Members choosing not to withdraw must acknowledge the consequences mentioned in subsection (1) when telling the ACA under subsection 1A.8(4) that they choose not to withdraw.

1A.11 Making a new application

- (1) If all members of an applicant group withdraw their applications, a new applicant may apply to the ACA for registration.

Note: By subsection 1A.8 (4), the application must be given to the ACA within 10 working days of the ACA telling the members of the group that the ACA considers them to be associated.

- (2) The new applicant must be a legal entity made up only of 1 or more members of the same applicant group who have withdrawn their individual applications under paragraph 1A.8 (3) (a) and who wish to take part in making the new application.
- (3) Sections 2.4 and 2.6 apply to a new application, except that the eligibility payment, and Deed of Financial Security or performance payment, must be given to the ACA within the 10 days mentioned in subsection 1A.8 (4).
- (4) The new application must be accompanied by a statutory declaration by the new applicant that it is not associated with any person except a person making up the entity.

1A.12 New application—limit on acceptance

The ACA must not accept a new application unless it is satisfied that the new applicant is not associated with:

- (a) any other applicant who has not withdrawn; or
- (b) if there is, or may be, another new applicant—the other new applicant.

1A.13 Designation of applicants as associated applicants

- (1) If an applicant group does not tell the ACA that it is exercising 1 of the options under subsection 1A.8 (2) within the 10 day period mentioned in subsection 1A.8 (4), the ACA must designate the members of the group as associated applicants.
- (2) If only some members of the group withdraw, the ACA must designate the remaining members as associated applicants.
- (3) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the Administrative Appeals Tribunal.

Notes:

1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the *Administrative Appeals Tribunal Act 1975*.
2. A decision designating applicants as associated applicants can be reviewed by the Administrative Appeals Tribunal, see section 1A.29.

1A.14 Consequences of designation as associated applicants

- (1) If the ACA designates members of a group of applicants as associated applicants (a *designated applicant group*), the members of the group are to be taken to be a single applicant.
- (2) The ACA must deal with members of a designated applicant group taken to be a single applicant for subsection (1) by:
 - (a) registering the designated applicant group as a separate bidding entity for the auction; and
 - (b) issuing a common bidder identification number (BIN), password, and set of encryption keys and transaction code keys for use by all members of the designated applicant group; and
 - (c) setting the eligibility of each member of the designated applicant group as the sum of the initial eligibility nominated by each member of the group in its application form, but so as not to exceed the allocation limits under this determination; and
 - (d) setting the number of waivers for each member of the designated applicant group at the same number as other applicants who are not members of a designated applicant group; and
 - (e) accepting the first relevant bidding instruction file mentioned in section 4.9 that is received by the ACA as the only bid file of members of the designated applicant group; and
 - (f) treating any bid or automatic rebid, bid withdrawal, or exercise of waiver by a member of a designated applicant group as if it had been made, withdrawn or exercised by each other member of that group.

- (3) For subsection (2), a *relevant bidding instruction file* is a bid file that was created using the common bidder identification number and set of encryption keys and transaction code keys mentioned in paragraph (2) (b).

Notes:

1. A BIN is allocated on registration, as are a set of transaction code keys (subsection 2.14 (2)).
2. Acceptance of the first relevant bidding instruction file mentioned in section 4.16 that is received by the ACA as the only bid file of members of the designated applicant group may have the result that other members of the designated applicant group may fail to meet activity levels and so progressively lose eligibility under section 4.19.

Division 5—Procedures during auction

1A.15 Detection of associated applicants during auction

- (1) If at any time during the auction the ACA considers that 2 or more applicants, that have not been designated as associated applicants, may be associates, the ACA must:
 - (a) suspend the auction from the end of the current round; and
 - (b) tell each of the applicants concerned, listing identification details about the other applicants that the ACA believes to be associated and stating the basis of its belief; and
 - (c) ask each of the applicants concerned to make a statutory declaration stating whether the applicant is an associate of any of the other listed applicants and, if so, giving details of the listed applicant and the association.
- (2) The ACA must state a date, not more than 5 working days after the date of the request, by which the statutory declaration must be received by the ACA.
- (3) An applicant asked to make a statutory declaration in accordance with this section must comply with the request.
- (4) A statutory declaration by an applicant that is a corporation must be given by a director of the corporation.

1A.16 Exclusion of applicants because of failure to make statutory declaration

An applicant who does not give the ACA a statutory declaration in accordance with section 1A.15 is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.

1A.17 Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because of failure to make a statutory declaration (an *excluded applicant*) is not refundable.

- (2) The eligibility payment and refundable performance payments (if any) of an excluded applicant are refundable.
- (3) However, before refunding the eligibility payment of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.
- (4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment cannot be refunded until then.

1A.18 Designation of associated applicants during auction

- (1) If, during the auction, the ACA considers that 2 or more applicants who have not been excluded are associated, the ACA must designate the applicants as associated applicants.
- (2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the Administrative Appeals Tribunal.

Notes:

1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the *Administrative Appeals Tribunal Act 1975*.
2. A decision designating applicants as associated applicants can be reviewed by the Administrative Appeals Tribunal, see section 1A.29.

1A.19 Consequences of designation as associated applicants

- (1) If the ACA designates members of a group of applicants as associated applicants (a *designated applicant group*), the members of the group are to be taken, for this determination, to be a single applicant.

- (2) The ACA must deal with members of a designated applicant group taken to be a single applicant for subsection (1) by:
 - (a) revoking the bidder identification numbers, encryption code keys and transaction code keys previously issued to the members of the designated applicant group (*members*); and
 - (b) issuing to all members a new common bidder identification number (BIN), password, encryption code keys and transaction code keys for use from the time the auction resumes; and
 - (c) setting the eligibility of each member of the designated applicant group as the sum of the current eligibility of each of the members at the end of the round immediately before the suspension of the auction, but so as not to exceed the allocation limits under this determination; and
 - (d) setting the number of waivers for each member of the designated applicant group at the highest number held by any of the members at the end of the round immediately before the suspension; and
 - (e) treating any bid or automatic rebid, bid withdrawal, or exercise of waiver by a member of a designated applicant group as if it had been made, withdrawn or exercised by each other member of that group.

1A.20 Effect of designation of associated applicants on bidding

- (1) When the ACA revokes bidder identification numbers of members of a designated applicant group, it will remove any high bid held against those bidder identification numbers.
- (2) When the ACA removes a high bid:
 - (a) the ACA is taken to be the highest bidder for the lot, at the next highest bid (whether the next highest bid was made in that round or a previous round); and
 - (b) the ACA will be identified by the bidder identification number 9999; and
 - (c) the minimum bid for the lot in the next round is equal to that next highest bid.

- (3) For subsection (2), if there is no next highest bid for a lot:
 - (a) the amount of the high bid to be recorded is taken to be zero; and
 - (b) the starting bid for the lot will be the starting bid set for that lot by the ACA under section 2.17 or, if the amount of the starting bid for the lot has been varied by the Chair under section 4.13, that amount.

Note: No bid withdrawal penalty will apply to an applicant if the ACA removes a high bid under subsection 1A.20 (1).

- (4) Before the auction restarts, the ACA must recalculate the results of the auction at the end of the round in which the suspension of the auction took effect, taking into account the removal of any high bids under subsection (1) and publish these using the auction computer system and the internet.

1A.21 Telling other applicants of designation of associated applicants

- (1) If the ACA designates any applicants as associated applicants under section 1A.18, the ACA must tell all other applicants before the auction restarts.
- (2) The ACA must also tell all other applicants:
 - (a) that the ACA will reject any instructions about taking part in the auction (ie bidding, withdrawal of a bid or waiver) received from a member of a designated applicant group if those instructions are inconsistent with earlier instructions that the ACA has received from another member of that group; and
 - (b) the date and time of the resumption of the auction.
- (3) For paragraph (2) (a), instructions are taken to be inconsistent with earlier instructions if it is not open to a single applicant, under this determination, to give the subsequent instructions.

Note: Members of a designated applicant group will have the same BIN.

Division 6—Procedures after auction

1A.22 Successful applicants to make statutory declarations

- (1) After the close of the auction, but before licences are issued, the ACA must give each successful applicant identification details of all other successful applicants and ask each successful applicant to make a statutory declaration stating whether the applicant is an associate of any other successful applicant and, if so, giving details of the applicant and the association.
- (2) The ACA must state a date, not less than 10 working days after the date of the request, by which the statutory declaration must be received by the ACA.

1A.23 Exclusion of applicants because of failure to make statutory declaration

A successful applicant who does not give the ACA a statutory declaration in accordance with section 1A.22 is excluded from obtaining a spectrum licence in the allocation process.

1A.24 Consequences of exclusion

- (1) If a successful applicant is excluded from obtaining a spectrum licence, all lots for which the applicant was successful are taken to be unallocated lots.
- (2) The entry fee of a successful applicant who is excluded from obtaining a spectrum licence because of failure to make a statutory declaration (an *excluded applicant*) is not refundable.
- (3) The eligibility payment and refundable performance payments (if any) of an excluded applicant are refundable.
- (4) However, before refunding the eligibility payment of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.

- (5) In working out the bid withdrawal penalties deductible under subsection (4), all successful bids of the applicant are taken to be withdrawn.

1A.25 Designation of associated applicants after auction

- (1) If the ACA considers that 2 or more successful applicants who have not been excluded are associated, the ACA must designate the applicants as associated applicants.
- (2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the Administrative Appeals Tribunal.

Notes:

1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the *Administrative Appeals Tribunal Act 1975*.
2. A decision designating applicants as associated applicants can be reviewed by the Administrative Appeals Tribunal, see section 1A.29.

1A.26 Consequences of designation as associated applicants

- (1) If the ACA designates 2 or more successful applicants as associated applicants, the ACA must combine the lots for which the applicants were successful.
- (2) If the issue of a spectrum licence or licences for the combined lots would result in the allocation limits under this determination being exceeded, spectrum licences will be issued only:
- (a) up to the allocation limits; and
 - (b) as directed by the associated applicants.
- (3) The direction must:
- (a) be given jointly by the associated applicants; and
 - (b) tell the ACA how the spectrum is to be allocated between them within the allocation limits.

1A.27 Unallocated lots

A lot left unallocated because of section 1A.24 or 1A.26 may be allocated as if the lot were an unallocated lot for section 6.1.

1A.28 Moneys payable by a successful applicant

- (1) In spite of allocation limits being imposed on a successful applicant as mentioned in section 1A.26:
 - (a) the successful applicant must pay the balance of the bid price for all lots on which it was the successful bidder; and
 - (b) each applicant with which the successful applicant is designated as being associated is liable to pay the balance of the bid price on all lots on which that applicant was the successful bidder.
- (2) The payments must be made in accordance with section 5.3.

Note: For **balance of the bid price**, see section 1.4 and section 5.2.

- (3) If a lot is treated as unallocated and is later allocated under section 6.1, the successful applicant must also pay the ACA:
 - (a) if the amount obtained for the lot is less than the highest bid by the successful applicant the difference between those amounts; and
 - (b) the costs (if any) reasonably incurred by the ACA in allocating the lot.
- (4) The ACA may deduct any difference payable under subsection (3) from the money paid by the successful applicant to the ACA (including money paid under subsection (1)).
- (5) The ACA will refund any balance of the money remaining after the deduction to the successful applicant.
- (6) If:
 - (a) a successful applicant does not pay the money payable under subsection (1); or
 - (b) the amount paid is not enough to satisfy the liability under subsection (3);

the amount due under subsection (3) is a debt due to the ACA and recoverable from the successful applicant in a court of competent jurisdiction.

Division 7—General

1A.29 Review

An applicant who has been designated as an associated applicant may apply to the Administrative Appeals Tribunal for review of the decision within 10 working days of being told of the decision.

1A.30 Definitions of terms used in this Part

(1) In this Part:

allocation limits means the limits imposed by section 1A.2 on aggregate parts of spectrum for which licences may be allocated to particular applicants under this determination;

applicant means a person who has applied for registration as an applicant under section 2.14 of this determination;

approved form means a form approved by the ACA;

associate, in relation to a person, means:

(a) for a body corporate:

(i) a director or secretary of the body; or

(ii) a related body corporate; or

(iii) a director or secretary of a related body corporate; or

(iv) a business partner of the body; or

(v) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or

(b) for an individual:

(i) the individual's spouse; or

(ii) another person who, although not legally married to the individual, lives with the individual on a genuine domestic basis as the spouse of the person; or

(iii) a business partner of the individual; or

(iv) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or

- (v) a body corporate of which the individual is a director or secretary; or
- (vi) a body corporate that is related to a body corporate of which the individual is a director or secretary; or
- (c) for any person - any other person (other than the ACA) who has a relevant agreement with the person that:
 - (i) entitles 1 of the parties to the agreement to use spectrum licensed to another person under a spectrum licence that relates to a part of the spectrum referred to in a re-allocation declaration; or
 - (ii) provides for the acquisition of a spectrum licence that relates to a part of the spectrum referred to in a re-allocation declaration;

corporation has the same meaning as in the Corporations Law;

designated applicant group means a group of applicants designated as associated applicants for a provision of this Part;

director, for a corporation, has the same meaning as in the Corporations Law;

re-allocation declaration means the *Radiocommunications (Spectrum Re-Allocation) Declaration No. 2 of 2000* made under section 153B of the Act on 7 October 2000;

related body corporate has the meaning given by the Corporations Law;

relevant agreement means an agreement, arrangement or understanding:

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

other than an agreement between carriers provided for by or under the *Telecommunications Act 1997*, Part XIC of the *Trade Practices Act 1974* or the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*;

specified group of persons means a person and all the associates of that person.

Note: ACCC is defined in the Act.

- (2) For this Part, 2 or more specified groups of persons having 1 member in common are taken to be 1 specified group of persons.

Part 2 Preparing for the auction

Division 1 Application and registration

2.1 Entry fee and eligibility payment

Before the ACA publishes a notice inviting applications for an auction, it must set:

- (a) the amount of the entry fee; and
- (b) the amount of the eligibility payment required for each unit of eligibility nominated by an applicant; and
- (c) the financial security amount for the auction.

2.2 Publication of notice by ACA

- (1) Before holding an auction, the ACA must publish a notice in a newspaper circulating nationally in Australia:
 - (a) describing the parts of the spectrum to be auctioned; and
 - (b) giving a brief description of the way the auction will be conducted; and
 - (c) inviting people to apply to the ACA to take part in the auction; and
 - (d) stating the date and time by which applications and the entry fee must be received by the ACA (the *application closing date*); and
 - (e) stating the date and time by which eligibility payments, and performance payments or Deeds of Financial Security, must be lodged with the ACA (the *eligibility payment date*); and
 - (f) stating that licences will be auctioned in accordance with this determination; and
 - (g) stating that further information (the *Applicant Information Package*) can be obtained from the ACA at the address given in the notice.

- (2) If a matter mentioned in the notice changes, the ACA must publish another notice giving details of the change in a newspaper circulating nationally in Australia.
- (3) The ACA may publish other information about auctions and may publish that information, and the notices mentioned in subsections (1) and (2), in other ways.

2.3 Applicant Information Package

- (1) The Applicant Information Package must contain the following information and documents:
 - (a) the spectrum re-allocation declaration by the Minister under section 153B of the Act ;
 - (b) a guide to the auction process;
 - (c) the Marketing Plan;
 - (d) this determination;
 - (e) the application form, with instructions for completing and lodging the form;
 - (f) the Deed of Financial Security;
 - (g) information about the performance payment as an alternative to providing a Deed of Financial Security, if required;
 - (h) the Deed of Acknowledgment;
 - (i) the amount of the entry fee for the auction set by the ACA under paragraph 2.1 (a);
 - (j) the amount of the eligibility payment required for each unit of eligibility nominated by the applicant set by the ACA under paragraph 2.1 (b);
 - (k) the financial security amount set by the ACA under paragraph 2.1(c);
 - (l) the application closing date and time for making applications;
 - (m) the eligibility payment date and time for lodging eligibility payments, and performance payments or Deeds of Financial Security;
 - (n) the address of the auction centre.

- (2) The Applicant Information Package may also contain other information about the auction.

2.4 Applications

- (1) A person who wants to obtain a spectrum licence under this determination must apply to the ACA for registration and pay the entry fee.
- (2) The person must give the ACA the following documents (the *application documents*):
 - (a) a completed application form;
 - (b) a completed Deed of Acknowledgment.
- (3) The entry fee must be paid in accordance with section 1.9.

Note: By section 1.9, the entry fee may be paid by bank cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made. If the payment is not in the ACA's account within 5 working days of the application date, the application ceases to have effect.

2.5 Lodging of applications

- (1) The application must be lodged with the ACA, at the auction centre, by the advertised time on the advertised application closing date.
- (2) If the application is lodged by fax, the originals of the documents lodged by fax must be received by the ACA no later than 2 working days after the advertised closing date. If they are not, the person's application ceases to have effect and the person is not entitled to take part in the auction or be allocated a licence.
- (3) As soon as practicable after receiving the application, the ACA must confirm receipt by fax or by letter (if the ACA does not know the applicant's fax number) noting particulars of the applicant's:
 - (a) name; and
 - (b) address; and
 - (c) ACN or ARBN; and
 - (d) initial eligibility.

2.5A Initial eligibility

- (1) An applicant must nominate its initial eligibility in the application form.
- (2) An applicant may nominate any eligibility the applicant wishes, as long as the amount does not exceed the total of the lot ratings of all lots on offer.
- (3) The ACA must ensure that the application form provides a guide to calculating initial eligibility.
- (4) If an applicant wishes to change the initial eligibility nominated in the application form, the applicant must give the ACA written notice of the applicant's new eligibility.
- (5) The notice must be given to the ACA by the advertised time on the advertised eligibility payment date.
- (6) An applicant cannot change its initial eligibility after the eligibility payment date.

Note 1 An applicant cannot bid so as to exceed its eligibility: see section 4.17 — but nothing prevents an applicant from obtaining eligibility to cover all lots up to the limits in section 1A.2, as long as the applicant pays the appropriate eligibility payment.

Note 2 Subject to the limits set by section 4.17, an applicant may bid on any combination of lots. In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated on the application form.

2.6 Initial eligibility payment

- (1) An applicant must, by the advertised time on the advertised eligibility payment date:
 - (a) pay the ACA an eligibility payment, worked out in accordance with section 2.7; and
 - (b) if required under section 2.8, either:
 - (i) give the ACA a completed Deed of Financial Security; or
 - (ii) pay the ACA a performance payment.
- (2) The eligibility payment and performance payment must be paid in accordance with section 1.9.

Note: By section 1.9, the eligibility payment and performance payment may be paid by bank cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made. If the payment is not in the ACA's account within 5 working days of the closing date, the application ceases to have effect.

- (3) Acceptance of a payment is not acceptance of the application documents.

2.7 Calculating the eligibility payment

The amount of eligibility payment payable by an applicant is the amount in dollars worked out by multiplying the amount of the applicant's initial eligibility by the amount set by the ACA under paragraph 2.1 (b).

2.8 Deed of Financial Security or performance payment

- (1) A person who wishes to be registered as an applicant must give the ACA a Deed of Financial Security or performance payment unless:
 - (a) the applicant satisfies the ACA that it is an authority of the Commonwealth, a State or a Territory; or
 - (b) the applicant satisfies the ACA that it is a subsidiary, within the meaning of the Corporations Law, of an authority of the Commonwealth, a State or a Territory; or
 - (c) the ACA decides, under subsection (2), that the applicant need not give the ACA a Deed of Financial Security or performance payment.
- (2) If a company (other than a company incorporated outside Australia) satisfies the ACA that it does not carry on business for profit, the ACA:
 - (a) may decide that the company need not give the ACA a Deed of Financial Security or a performance payment; and
 - (b) must notify the company in writing of the decision as soon as practicable after making the decision.
- (3) The amount payable to the ACA under the Deed of Financial Security, or the performance payment, must be at least an amount in dollars calculated as the initial eligibility nominated by the applicant multiplied by the financial security amount set by the ACA under paragraph 2.1(c).

- (4) A person giving a Deed of Financial Security must be:
 - (a) a bank licensed to operate in Australia; or
 - (b) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
 - (c) if Part VII of that Act has not ceased to have effect — a Lloyd's underwriter.
- (5) For this section, a corporation makes a Deed of Financial Security by executing the Deed in accordance with section 127 of the Corporations Law.

2.9 Lodging of power of attorney

If a Deed of Financial Security is made under a power of attorney for a corporation, the applicant must give the ACA a copy of the power of attorney with the Deed.

2.10 Failure to comply with requirements concerning Original Documents and Deed of Financial Security

- (1) This section applies if:
 - (a) the applicant does not lodge the originals of documents lodged by fax in accordance with subsection 2.5 (2); or
 - (b) the ACA is not satisfied that the person giving the Deed is a person who complies with subsection 2.8 (4).
- (2) The applicant's registration is of no effect.
- (3) The applicant is excluded from taking part (or any further part) in the auction and from obtaining a spectrum licence.
- (4) The applicant's eligibility payment and refundable performance payments (if any) are refundable.
- (5) The applicant's entry fee is not refundable.

2.11 Performance payment

- (1) This section applies if an applicant gives the ACA a performance payment instead of a Deed of Financial Security.

Section 2.12A Withdrawal of applicant□

- (2) Performance payment monies lodged with the ACA may be dealt with in accordance with this determination as security for the timely discharge of the applicant's financial obligations to the ACA under this determination.
- (3) If an applicant defaults in making payment for a successful bid, the performance payment is forfeited to the ACA to meet any undischarged liability of the applicant in accordance with section 5.4.
- (4) The ACA must account to the applicant for the performance payment monies after completion of the auction, as set out in Part 5.

2.12 Forfeiture and refund of secured monies

- (1) To meet any undischarged liability owed by an applicant to the ACA for the matters mentioned in subsection (2), monies will be forfeited to the ACA that:
 - (a) are secured by the performance payment; or
 - (b) are paid to the ACA, on demand, under the Deed of Financial Security; or
 - (c) have been paid by the promisor to the ACA under clause 1.4 of the Deed of Financial Security.
- (2) For subsection (1), the matters include:
 - (a) any act or omission by the applicant, its officers, employees, agents, volunteers, subcontractors or associates in connection with the applicant's participation in an allocation process conducted under this determination; or
 - (b) any breach or default by the applicant of its obligations or warranties under the Deed of Acknowledgment, this determination, or both.

2.12A Withdrawal of applicant

- (1) An applicant may withdraw from the auction process at any time before the auction starts, by written notice given to the ACA.

- (2) An applicant who withdraws (a *withdrawn applicant*) is excluded from taking part in:
 - (a) the auction; and
 - (b) the allocation of the spectrum in any other way as part of the current allocation process (for example, for a pre-determined price under Part 3).
- (3) The entry fee paid by a withdrawn applicant is not refundable.
- (4) The eligibility payment and refundable performance payments (if any) of a withdrawn applicant are refundable.

2.13 Register of applicants

- (1) The ACA must maintain a register of applicants.
- (2) The register may be in electronic form.
- (3) For each applicant, the register must contain details of:
 - (a) the name and address of the applicant; and
 - (b) the applicant's telephone and fax numbers; and
 - (c) the applicant's eligibility; and
 - (d) the applicant's bidder identification number; and
 - (e) if the applicant is a company or a registrable body — the applicant's ACN or ARBN.
- (4) The register may also contain any other information that the ACA considers necessary for the running of the auction.
- (5) The ACA must make the changes to the register that the ACA considers necessary or convenient as soon as practicable after:
 - (a) an applicant tells the ACA of any change of name, address, or telephone or fax numbers; or
 - (b) the ACA becomes aware that any information on the register is not correct.
- (6) Except as authorised by this determination, or as otherwise authorised by law, the ACA must ensure that any details about applicants are not disclosed until the auction is closed.

2.14 Registration of applicants

- (1) The ACA must register an applicant only if:
 - (a) the applicant has:
 - (i) lodged completed application documents; and
 - (ii) paid the entry fee in accordance with section 1.9; and
 - (iii) paid the eligibility payment, and lodged a Deed of Financial Security or paid a performance payment, in accordance with section 1.9; and
 - (b) if a Deed of Financial Security is required — the ACA is satisfied that the person who made the Deed is a person who complies with subsection 2.8 (4).
- (2) The ACA must assign to each registered applicant:
 - (a) a bidder identification number (***BIN***); and
 - (b) a password and encryption code keys linked to that BIN to use with the auction computer system; and
 - (c) a set of transaction code keys to be used if the applicant needs to bid by telephone in an emergency.
- (3) At least 5 working days before the start of the auction, the ACA must, by writing, tell each registered applicant:
 - (a) that the applicant has been registered; and
 - (b) the applicant's initial eligibility, as shown on the register; and
 - (c) the starting date and time of the first round of the auction; and
 - (d) the ACA's telephone and fax numbers available for use by registered applicants; and
 - (e) the applicant's bidder identification number, password and transaction code keys.
- (4) At least 5 working days before the start of the auction, the ACA must give each registered applicant the relevant encryption code keys.

2.15 Publication of bidder identification numbers

- (1) After the closing date but at least 5 working days before the start of the auction, the ACA must publish a notice in a newspaper circulating in Australia setting out:
 - (a) if the registered applicant is a company, for each company:
 - (i) its name; and
 - (ii) its registered address; and
 - (iii) its ACN or ARBN; and
 - (b) if the registered applicant is an individual, the name of the person, if the person has consented to the publication of his or her name; and
 - (c) the initial eligibility of all registered applicants; and
 - (d) the bidder identification numbers of all registered applicants.
- (2) After the notice has been published, the ACA may give out the information in the notice in other ways.

2.16 Preparation for bidding

- (1) A registered applicant who bids must use software made available by the ACA.

Note See section 4.8 for ways of taking part in the auction.
- (2) The ACA will give each applicant:
 - (a) assistance in installing the software for the auction computer system; and
 - (b) training in using the software.
- (3) However, subsection (2) does not apply to an applicant who proposes to bid from outside Australia.

Note The ACA will make an auction guide available to each registered applicant to help the applicant take part in the auction: see paragraph 2.3 (1) (b).

Division 2 Things the ACA and the auction manager must do before the auction

2.17 Starting bids and increments

After the closing date, the ACA must set the following 3 amounts:

- (a) the starting bid for each lot;
- (b) the increment of price per lot rating;
- (c) the increment of percentage of high bid.

Note The Chair may vary the starting bid, and the auction manager may vary the other amounts set under section 2.17: see sections 4.13 and 4.13A.

2.18 Stages of auction, eligibility percentage, waivers and first round

After the closing date, the auction manager must:

- (a) fix the number of stages for the auction; and
- (b) fix a percentage of eligibility as the percentage to be applied in calculating the activity target during each stage of the auction; and
- (c) fix the number of waivers for each registered applicant, being the same number for all applicants; and
- (d) set the amount of time allocated for the bidding period for each round of the auction; and
- (e) set the amount of time allocated for the results period of each round of the auction; and
- (f) set the schedule for the first and second rounds, based on the amounts referred to in paragraphs (d) and (e), taking into account the effect of section 4.4; and
- (g) tell all registered applicants of these matters.

Part 3 Allocation for a pre-determined price or a negotiated price

3.1 Allocation for a pre-determined price without an auction

- (1) If the ACA considers that it may be able to allocate licences for lots without having to conduct an auction to identify the highest value user for the spectrum represented by those lots, the ACA will offer to allocate licences for the lots for a pre-determined price, as set out in this Part.
- (2) The offer of a licence will be conditional on payment of the pre-determined price.

3.2 The pre-determined price

- (1) The pre-determined price for a licence is worked out as follows:
 - (a) the ACA will identify each lot to be included in the licence;
 - (b) if it has not already done so, the ACA will set the starting bid for each lot;
 - (c) the ACA will add up the starting bids for each lot.

Note The starting bid is set by the ACA under section 2.17.
- (2) The balance of the pre-determined price payable by an applicant is the pre-determined price less the amount of the eligibility payment paid by the applicant.

3.2A ACA must have regard to applicants' requirements

In deciding for subsection 3.3 (1) whether it may be able to allocate licences without an auction, and in identifying lots for paragraph 3.2 (1) (a), the ACA must only have regard to:

- (a) the applicants' indication, in their application forms, of the lots they require; and
- (b) such other information about the lots they require that applicants may provide to the ACA.

Section 3.4**3.3 Offer of licence**

- (1) The ACA will offer each applicant a licence or licences for the lots identified under paragraph 3.2 (1) (a).
- (2) The ACA will send each applicant, by receipted mail:
 - (a) a draft of the licence or licences; and
 - (b) a notice stating:
 - (i) that the applicant is offered a licence or licences for the lots identified under paragraph 3.2 (1) (a); and
 - (ii) the amount of the pre-determined price payable for each licence and the total pre-determined price; and
 - (iii) the amount of the eligibility payment made by the applicant and held by the ACA; and
 - (iv) the balance of the pre-determined price payable for the licence or licences; and
 - (v) that the offer is conditional on each other applicant accepting the licence or licences offered or telling the ACA that it withdraws its application for a licence.
- (3) An applicant who wishes to accept the ACA's offer must do so by notifying the ACA in writing within 10 days of receiving the offer, agreeing to pay the balance of the pre-determined price.
- (4) If every applicant accepts the licence offered to the applicant, each applicant is entitled to be allocated the licence offered on payment of the balance of the pre-determined price in accordance with this determination.
- (5) The ACA must write to each applicant about each applicant's entitlement under subsection (4).

Note For the issue of licences, see section 62 of the Act.

3.4 Payment of balance of pre-determined price

The balance of the pre-determined price is payable:

- (a) within 10 working days of the date of the letter sent to the applicant under subsection 3.3 (5); and
- (b) in accordance with section 1.9.

Section 3.7

Note: By section 1.9, the balance of the pre-determined price may be paid by bank cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made.

3.5 Allocation if some offers refused

If an applicant does not accept, in accordance with subsection 3.3 (3), a licence that has been offered to it, the ACA may:

- (a) withdraw from auction all spectrum covered by the licences offered and terminate the auction; or
- (b) allocate all that spectrum by auction under this determination; or
- (c) allocate licences under subsection 3.3(4) to the applicants who have accepted the offered licences and, for lots covered by licences that were refused:
 - (i) allocate those lots by auction, in accordance with this determination; or
 - (ii) withdraw those lots from allocation and allocate the spectrum covered by those lots at a later date.

Note: The ACA may make determinations under section 60 of the Act about allocations other than by auction.

3.5A Refunds if allocation terminated

If the ACA terminates the auction under section 3.5, the eligibility payments and refundable performance payments of all applicants are refundable.

3.7 Default

If an applicant does not pay the balance of the pre-determined price for a licence in accordance with section 3.4:

- (a) the applicant ceases to be entitled to be allocated the licence; and
- (b) the eligibility payment, and refundable performance payments of the applicant are forfeited to the ACA; and
- (c) the allocation of licences under this Part to other applicants is not affected; and
- (d) the lots included in the licence are to be treated as unallocated lots under section 6.1.

Part 4 The auction

Division 1 Auction arrangements

4.1 Auction procedure

- (1) An auction consists of a number of stages, made up of a number of rounds.
- (2) The first round of the auction starts on the date and time for that round set by the auction manager under paragraph 2.18 (f).

4.2 Rounds of an auction

- (1) Each round of an auction is made up of the following periods and activities:
 - (a) the bidding period — during which registered applicants make their bidding instructions;
 - (b) the results period — during which the auction manager works out the high bids on each lot offered, using the auction computer system and then publishes, using the auction computer system and the internet, the *results* for the round.

Note For paragraph (a), the following provisions are relevant:

- (a) in the case of electronic bidding — a bid is taken to have been made when the bidding instruction file containing the bid has been authenticated by the ACA's auction computer system in accordance with paragraph 4.9 (1) (f);
- (b) in the case of emergency telephone bidding — a bid is taken to have been made when the bidding instruction file containing the bid has been authenticated by the ACA's auction computer system in accordance with paragraph 4.10 (1) (f);
- (c) in the case of withdrawing bids — withdrawal may be subject to penalties, as set out in section 4.23.

(2) In this section:

results, for a round, means the following results and information:

- (a) all bids, rounded down to 4 significant digits or less, and bid withdrawals made during the round;
- (b) the amount of the high bid on each lot at the end of the round, rounded down to 4 significant digits or less, and the bidder identification number of each high bidder;
- (c) the minimum bid on each lot for the next round;
- (d) the total value of high bids held by an applicant at the end of the round;
- (e) each registered applicant's eligibility at the beginning of the next round;
- (f) the schedule for the next round and the round after that, worked out from the times set by the auction manager under paragraphs 2.18 (d) and (e), having regard to the matters set out in section 4.4;
- (g) any other information necessary for the smooth running of the auction.

(3) The information about a bid published under this section must not identify the automatic re-bid limit of any applicant unless that re-bid limit becomes a bid for the round.

4.3 Schedule for a round

The schedule for a round must include:

- (a) the date and time at which the round is to start and bidding opens; and
- (b) the date and time when the bidding period ends and the results period starts; and
- (c) the date and time when the results period ends and the round ends.

4.4 Rounds on a day

(1) Once the auction opens, there will be at least 1 round each working day unless the day is a recess day.

- (2) No round on a day will start before 9.00 am.
- (3) If, after the end of a round, the auction manager thinks that there will be time to finish another round before 5.30 pm on that day, he or she may decide to hold another round for that day.

4.5 Recess days

- (1) The auction manager may declare a day to be a recess day.
- (2) Before declaring a recess day, the auction manager must give registered applicants an opportunity to comment on the proposed declaration and take into account any comments received.
- (3) If the auction manager decides to declare a day to be a recess day, the auction manager must tell all registered applicants of this.

4.6 Auction manager may vary the length of the bidding or results period

- (1) The auction manager may vary the length of the bidding period or the results period of a round in the auction.
- (2) Before varying the length of time set for the bidding period or the results period of a round in the auction, the auction manager must:
 - (a) tell registered applicants of the proposed change; and
 - (b) ask registered applicants for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) If the auction manager decides to vary the length of time set for the bidding period or the results period of a round in the auction, the auction manager must tell all registered applicants of this and specify the round when the change will take effect.

4.7 Movement to next stage of auction

- (1) The auction manager may move the auction to the next stage.
- (2) Before moving the auction to the next stage, the auction manager must:
 - (a) tell registered applicants of the proposal; and
 - (b) ask registered applicants for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) If the auction manager decides to move to the next stage he or she must tell all registered applicants of this and specify the round when the change will take effect.

Division 2 Bidding and taking part in the auction

4.8 Ways of taking part in the auction

- (1) The way for a registered applicant to take part in an auction is by electronic means.
- (2) A registered applicant taking part in an auction must use only the software made available by the ACA.
- (3) However, a registered applicant may take part by telephone if, because of what the ACA considers to be an emergency, the registered applicant is unable to take part electronically.

- (4) In this Division:

taking part means bidding, making automatic re-bids, withdrawing a bid, exercising a waiver or giving instructions not to exercise a waiver.

Note For general rules about bidding, see section 4.16; for rules on using a waiver, see section 4.20; and for withdrawing a bid, see section 4.21.

4.9 Electronic bidding procedure

- (1) The procedure for taking part in the auction electronically is as follows:
 - (a) a registered applicant must use the bidding software available from the ACA to prepare its bidding instruction file for the round;
 - (b) the bidding instruction file will be encrypted for transmission and digitally signed using keys provided by the ACA to authenticate the file as having been created by the registered applicant;
 - (c) the bidding software will permit the registered applicant to print out a report of the bidding instructions contained in the bidding instruction file before transmission;
 - (d) the registered applicant must use the software to connect to the ACA's auction computer system;

Section 4.10

- (e) the registered applicant must initiate a file transfer of the bidding instruction file to the ACA's auction computer system;
 - (f) once the bidding instruction file is authenticated, the ACA's auction centre computer will generate a receipt file which will be returned to the registered applicant during the connection;
 - (g) the ACA's auction computer system will process the bidding instructions contained in the bidding instruction file.
- (2) Details of procedures for bid transmission and authentication are set out in Schedule 1.

4.10 Emergency telephone bidding procedure

- (1) The procedure for emergency telephone bidding is as follows:
- (a) a registered applicant must use the telephone number notified by the auction manager as the number for telephone bidding;
 - (b) the registered applicant's call will be taken by an ACA operator;
 - (c) the registered applicant must quote the bidder identification number and transaction code key, as described in Schedule 1, assigned to the applicant by the ACA;
 - (d) the registered applicant must meet any additional identification requirements imposed by the ACA, as set out in Schedule 1;
 - (e) the ACA must enter the bidding instructions, as directed by the registered applicant, into the auction computer system as soon as practicable;
 - (f) the time that bidding instructions contained in a bidding instruction file are made is taken to be the time that the file was authenticated by the ACA's auction computer system;
 - (g) the ACA must print out a confirmation of the bidding instructions from the auction computer system;

Section 4.12

- (h) the ACA must send this to the registered applicant by fax, if the applicant has nominated a fax number;
 - (i) the ACA must process the bidding instructions in the same way as it processes the bids made electronically by registered applicants.
- (2) Details of the procedures for bid transmission and authentication are set out in Schedule 1.

4.11 Identification of registered applicants

- (1) A registered applicant must use its bidder identification number when bidding, and must comply with the other identification requirements set out in Schedule 1.
- (2) If the auction manager tells registered applicants to use additional identification, they must do so.

4.12 Starting and minimum bids

- (1) A bid on a lot below the amount of the starting bid for that lot will not be accepted.
Note For starting bids, see sections 2.17 and 4.13.
- (2) After a starting bid has been made on a lot in a round, a bid in a later round on the lot that is below the minimum bid for that lot will not be accepted.
- (3) The minimum bid for a lot is the sum of the high bid on that lot in the previous round, as published in the results and information for the round, and the higher of:
 - (a) the increment of price per lot rating set under section 2.17, multiplied by the lot rating for the lot; and
 - (b) the increment of percentage of high bid set under section 2.17, multiplied by that high bid.
- (4) However, if a bid on a lot is withdrawn, the minimum bid on that lot is worked out in accordance with section 4.21.
- (5) A registered applicant who holds the high bid on a lot from a previous round is not required by subsection (2) to raise its own high bid, but may do so.

4.13 Changing starting bids

- (1) Despite section 4.12, the Chair may, at any time, vary the amount of the starting bid on a lot.
- (2) Before doing this, the Chair must:
 - (a) tell registered applicants of the proposed change; and
 - (b) ask registered applicants for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) The auction manager must notify all registered applicants of the change before the round when the change takes effect.

4.13A Changing minimum bids

- (1) Despite section 4.12, the auction manager may, at any time during the auction, change the amounts fixed under paragraphs 2.17 (b) and (c) to vary the minimum bid on a lot.
- (2) Before doing this, the auction manager must:
 - (a) tell registered applicants of the proposed change; and
 - (b) ask registered applicants for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) The auction manager must notify all registered applicants of the change before the round when the change takes effect.

4.14 Automatic re-bidding

- (1) A registered applicant may not make an automatic re-bid on a lot in a round unless the applicant:
 - (a) makes a bid on the lot in the round; or
 - (b) is the high bidder on the lot from the previous round.
- (2) An automatic re-bid:
 - (a) only applies in the round in which it is made; and
 - (b) must be:

Section 4.14

- (i) if the registered applicant makes the starting bid on a lot — at least 1 minimum bid increment above the starting bid; or
 - (ii) if the registered applicant makes a bid on a lot other than the starting bid — at least 1 minimum bid increment more than the applicant's own bid; or
 - (iii) if the registered applicant is already the high bidder on that lot — at least 2 minimum bid increments above the applicant's high bid as published in the results and information for the previous round.
- (3) In working out the high bid in a round, an automatic re-bid made by the bidder who made the next highest bid to the automatic re-bid is disregarded.
- (4) If only 1 bidder makes an automatic re-bid that exceeds the high bid made or held on the lot in the round by another bidder:
 - (a) the bidder is taken to be the high bidder for the lot in the round; and
 - (b) the amount of the high bid for the round is taken to be the lesser of:
 - (i) 1 minimum bid increment more than the highest bid recorded for the lot in the round; or
 - (ii) the amount of the automatic re-bid.
- (5) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made on the lot in the round by another bidder:
 - (a) the bidder who nominated the highest amount to which the automatic re-bid was limited is taken to be the high bidder for the lot; and
 - (b) the amount of the high bid for the round is taken to be the lesser of:
 - (i) 1 minimum bid increment more than the next highest amount to which an automatic re-bid was limited for the lot in that round; or
 - (ii) the highest amount to which an automatic re-bid was limited for the lot in that round; and
 - (c) the amount of the next highest bid is taken to be the next highest amount to which an automatic re-bid was limited for the lot in that round; and

Section 4.15

- (d) any bid instruction, including an automatic re-bid, is to be regarded as a bid for the lot at the amount of the automatic re-bid.
- (6) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made on the lot in the round by another bidder by the same amount, and that automatic re-bid amount exceeds any other automatic re-bid made on the lot in the round:
 - (a) the bidder whose re-bid is recorded in the computer system as being first made is taken to be the high bidder for the lot in that round; and
 - (b) the amount of the high bid for the round is taken to be the amount to which an automatic re-bid was limited for the lot in that round; and
 - (c) any bid instruction, including an automatic re-bid, is to be regarded as a bid for the lot at the amount of the automatic re-bid.
- (7) In this section:
 - minimum bid increment* for a lot in a round means the higher of:
 - (a) the increment of price per lot rating set under section 2.17, multiplied by the lot rating for the lot; and
 - (b) the increment of percentage of high bid set under section 2.17 multiplied by:
 - (i) the high bid on that lot in the previous round as published in the results and information for that round; or
 - (ii) if there is no high bid published in the results and information for that round — zero.

Note The ACA must not disclose automatic re-bid limits: see subsection 4.2 (3).

4.15 All lots on offer simultaneously

All of the lots on offer at an auction will be open for bidding in each round of the auction.

4.16 General rules about bidding

- (1) Subject to sections 1A.2A, 4.17 and 4.18, a registered applicant may bid on any combination of lots.
- (2) In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated in the application form.
- (3) In a round, an applicant may lodge only 1 file containing the applicant's bidding instructions.

Note An automatic re-bid may be made once only in a round: see section 4.14.

- (4) If 2 or more registered applicants make identical bids on the same lot and the bids are the high bids for the round, the bid that is recorded in the auction computer system as being made first in time will be taken to be the high bid on that lot for the round.
- (5) If a bid is disputed:
 - (a) the auction manager is the sole arbiter; and
 - (b) the auction manager's decision is final.
- (6) If a person who is not a registered applicant makes a bid for a lot:
 - (a) the bid is to be ignored; and
 - (b) the bid does not, by itself, affect further bidding on that lot or the validity of the licence that includes that lot.

Note For the emergency telephone bidding procedure, see section 4.10.

4.17 Eligibility bidding cap

- (1) A registered applicant is not entitled to bid in such a way that the total of the lot ratings of the lots on which the applicant is active in any 1 round exceeds the applicant's eligibility at the time of the bid.

Notes: 1. As to when an applicant is active, see subsection 1.4 (4).

2. A bidder who bids in such a way that it exceeds the allocation limits for the auction will be excluded from the auction—see subsection 1A.2A(2).

- (2) To ensure that an applicant's eligibility is not exceeded, the ACA will process the applicant's bids as follows:
- (a) bidding instructions will be processed in order of lot number, starting with the lowest number;
 - (b) bidding instructions will only be processed so that the total of the lot ratings for those bids does not exceed the applicant's eligibility;
 - (c) if the lot rating for a bid to be processed would result in the progressive total of lot ratings exceeding the applicant's eligibility — the ACA will not process that bid or any further bids of the applicant and will treat the bid and those further bids as if they had not been made.

4.18 Bidding activity targets

Subject to the waiver provisions in section 4.20, a registered applicant must bid in such a way during a round that the total of the lot ratings on the lots on which the applicant is active in that round is equal to or greater than the applicant's activity target for the round.

Note 1 For activity target, see subsection 1.4 (1).

Note 2 A registered applicant who does not bid in the way mentioned in this section is liable to lose eligibility, in accordance with section 4.19.

4.19 Loss of eligibility

- (1) A registered applicant's eligibility for the next round will be reduced to an amount worked out in accordance with subsection (2), if:
- (a) the registered applicant does not meet its activity target; and
 - (b) the registered applicant does not exercise a waiver in that round.
- (2) The amount of a registered applicant's eligibility under subsection 1 for the next round is to be worked out as follows:

$$E = \frac{R}{P}$$

where:

Section 4.20

E is the registered applicant's eligibility for the next round; and

R is the sum of the lot ratings of the lots on which the registered applicant was active in the current round; and

P is the percentage of eligibility (fixed by the auction manager under section 2.18) that applied in the round.

Example

A registered applicant's eligibility at the start of a round is 20,000 units. The activity requirement for the round is 60%, (ie 12,000 units). In the round, the registered applicant's activity is only 10,000 units and the applicant has not exercised a waiver, so eligibility will be reduced as a penalty for under-activity.

The registered applicant's new eligibility will be current activity (10,000) multiplied by the inverse of the current activity requirement (1/0.6). This equals 10,000 multiplied by 1.6667, which is 16,667 units. There is nothing the registered applicant can do once the auction is under way to recover eligibility.

- (3) A registered applicant who loses eligibility in a round is only entitled to bid in future rounds in such a way that the total lot ratings of the lots on which the applicant is active does not exceed its eligibility as reduced in accordance with this section.

4.20 Waiver

- (1) During the bidding period of a round, a registered applicant who would otherwise not meet its activity target may exercise a waiver of the effect of section 4.19.
- (2) A registered applicant may continue to exercise waivers until the applicant has used all its waivers fixed by the auction manager under section 2.18.
- (3) A registered applicant who exercises a waiver does not lose eligibility in that round.
- (4) If an auction manager exercises a waiver on an applicant's behalf, the applicant's eligibility for that round is not lost.
- (5) The auction manager will exercise a waiver on a registered applicant's behalf unless the registered applicant tells the auction manager, during the bidding process, that the waiver is not to be exercised, if:

- (a) a registered applicant bids in such a way that, but for this section, the applicant would not meet its activity target; and
 - (b) all the waivers fixed by the auction manager for the registered applicant have not been exercised.
- (6) A round will not be regarded as the final round if:
- (a) there are no bids in a round (and, as a result, the round would be regarded as the final round); and
 - (b) a registered applicant exercises a waiver in that round.

4.21 Withdrawal of bids

- (1) During a round, a registered applicant may withdraw its bid on a lot from a previous round only if the bid is the high bid on the lot in that round.
- (2) If a registered applicant withdraws a bid in a round in accordance with subsection (1) and no other applicant has made a bid on that lot in the round:
 - (a) the ACA is taken to be the high bidder in that round for the lot, at the next highest bid (whether the next highest bid was published in the results as a high bid or not); and
 - (b) the ACA will be identified by the bidder identification number 9999; and
 - (c) the minimum bid for the lot in the next round is equal to that next highest bid made on the lot in a previous round, or if there is no other bid, the starting bid for the lot; and
 - (d) the registered applicant may bid again on that lot in a later round; and
 - (e) the registered applicant withdrawing the bid may lose eligibility, as set out in section 4.22.

4.22 Loss of eligibility on withdrawal

If a registered applicant withdraws a bid in a round, the applicant will not be regarded as being active on that lot and may lose eligibility.

Note: For loss of eligibility, see section 4.19.

4.23 Withdrawal penalty

- (1) A registered applicant is liable for the withdrawal penalty in subsection (2) if:
 - (a) the registered applicant withdraws a bid from a previous round on a particular lot; and
 - (b) the successful bid price on the lot at the close of the auction is less than or equal to the withdrawn bid.

Note: A bid cannot be withdrawn unless it is the high bid for the lot – see section 4.21.

- (2) For subsection (1), the withdrawal penalty is an amount that is the greater of:
 - (a) the difference between the withdrawn bid and the successful bid price; and
 - (b) 10% of the withdrawn bid.
- (3) A registered applicant is liable for the withdrawal penalty in subsection (4) if the applicant withdraws a bid on a particular lot and the lot is not allocated at the auction.
- (4) For subsection (3), the withdrawal penalty is an amount that is the greater of:
 - (a) the difference between:
 - (i) the withdrawn bid; and
 - (ii) the highest bid for the lot which is made by another bidder after the withdrawal of the bid, and which is less than the withdrawn bid or, if there is no such bid, zero; and
 - (b) 10% of the withdrawn bid.
- (5) For subsection (4), if the applicant who withdrew the bid is the only applicant to have bid on the lot in the auction, the withdrawal penalty is worked out as if the second-highest bid was zero.
- (6) A registered applicant may withdraw a bid on a particular lot more than once, but the applicant is liable to a withdrawal penalty each time.

Section 4.24

- (7) The amount of all withdrawal penalties imposed on an unsuccessful applicant will be deducted from the applicant's eligibility payment and additional eligibility payment (if any) before any remaining portion is refunded.
- (8) If the amount of all withdrawal penalties exceeds the eligibility payment and additional eligibility payment (if any), the balance will be taken out of the performance payment or additional performance payment, or out of monies paid under a Deed of Financial Security, with any amount still owing being a debt due to the ACA that may be recovered in a court of competent jurisdiction.

Note If a withdrawal penalty is incurred by a successful applicant, the amount of the penalty will be added to the balance of the bid price payable by the applicant under section 5.2.

4.24 Suspension of an applicant

- (1) If the ACA considers that a registered applicant's transaction code keys have been compromised and cannot be used to authenticate bidding instructions, the auction manager may suspend the applicant's participation in the auction.
- (2) For subsection (1), the auction manager must tell the applicant:
 - (a) the reason for the suspension; and
 - (b) the period of suspension (if any).

4.25 Further Deed of Financial Security or additional performance payment

- (1) If, after the start of the auction, the amount secured under an applicant's Deed of Financial security, or the amount of an applicant's performance payment, falls below 10% of the total of high bids of the registered applicant recorded in the results of a round, the ACA must tell the applicant by written notice to:
 - (a) give the ACA a Deed of Financial Security (the *further Deed*); or
 - (b) pay an additional performance payment.

Section 4.24

- (2) The ACA must give the notice by fax to a fax number nominated by the registered applicant on its application form.
- (3) For a registered applicant who gives the ACA a Deed of Financial Security:
 - (a) if the applicant has previously paid a performance payment—the amount to be secured by the Deed is equal to the amount of performance payment already paid to the ACA; and
 - (b) if it is a further Deed—the amount to be secured by the further Deed is twice the amount secured under the existing Deed of Financial Security; and
 - (c) the Deed must be given to the ACA by 5.00 pm on the third working day after the date of the notice.
- (4) For a registered applicant who pays a performance payment:
 - (a) if the applicant has previously given the ACA a Deed of Financial Security—the amount of the performance payment is equal to the amount secured by the Deed; and
 - (b) if the applicant has previously paid a performance payment—the amount of the additional performance payment is the amount of the performance payment already paid by the applicant; and
 - (c) the payment must be paid to the ACA by 5.00 pm on the third working day after the date of the notice, and in accordance with section 1.9.
- (5) A registered applicant who fails to give a Deed under subsection (3), or pay a payment under subsection (4), is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.
- (6) If, at any time during the auction, the amount secured under an applicant's Deed of Financial security, or the amount of an applicant's performance payment and additional performance payment, falls below 10% of the total of the applicant's high bids, the ACA must again tell the applicant by written notice given in accordance with subsection (2) to:
 - (a) give the ACA another Deed of Financial Security (the *further Deed*), in accordance with subsection (3); or

- (b) pay an additional performance payment, in accordance with subsection (4).

Note: the effect of this paragraph is that the amount secured by the Deed of Financial Security, or the amount of performance payment, will double each time that the ACA issues a notice under this section.

- (7) A registered applicant who fails to give the ACA a further Deed, or pay the further additional performance payment, in accordance with subsection (6) is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.
- (8) When the ACA receives a further Deed:
 - (a) the existing Deed of Financial Security ceases to have effect; and
 - (b) the ACA must tell the giver of the existing Deed in writing that the existing Deed has ceased to have effect.
- (9) Sections 2.8, 2.9, 2.11 and 2.12 apply to a further Deed and to an additional performance payment.

4.26 Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because the applicant fails to give the ACA a Deed of Financial Security or pay a performance payment in accordance with section 4.25 (an *excluded applicant*) is not refundable.
- (2) The eligibility payment and refundable performance payments (if any) of an excluded applicant are refundable.
- (3) However, before giving a refund to an excluded applicant, the ACA must deduct any bid withdrawal penalties from the amount to be refunded.

Note: For withdrawal penalties, see section 4.23.
- (4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the excluded applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Section 4.24

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment cannot be refunded until then.

Division 3 Bringing the auction to an end

4.27 Suspension or cancellation of auction

- (1) The ACA or the auction manager may suspend or cancel an auction, or a round of an auction, at any time:
 - (a) if the Minister directs the ACA or the auction manager to do so; or
 - (b) because of:
 - (i) an error in, or technical failure of, the auction computer system; or
 - (ii) technical failure of the telecommunications system being used for the auction; or
 - (iii) an event beyond the control of the ACA; or
 - (c) if the ACA is satisfied that there has been, or is likely to be, a breach of the auction procedures of a kind that could compromise the auction; or
 - (d) if the auction manager is satisfied that in the circumstances it is appropriate to do so.
- (2) If the auction is suspended, the ACA or the auction manager may:
 - (a) resume the auction from the end of any round which has been completed, and for which the auction manager is satisfied that the results are correct; or
 - (b) cancel the auction.

Note: the auction manager may give the first round after resumption a higher round number if it is administratively expedient to do so.

- (3) If the auction is cancelled:
 - (a) all eligibility payments paid by registered applicants will be refunded; and
 - (b) the entry fee will not be refunded; and
 - (c) the ACA may allocate the lots:
 - (i) by another auction; or
 - (ii) by tender; or

- (iii) by allocation for a pre-determined price or a negotiated price.

Note The ACA may make a determination under section 60 of the Act about allocations other than by auction.

4.28 Closing of auction

- (1) The rounds of the auction are to continue until:
- (a) the auction is in its last stage; and
 - (b) no bid is made on any lot on offer; and
 - (c) no bidder exercises a waiver; and
 - (d) no applicant remains suspended from the auction.

Note: 1. The auction manager fixes the number of stages – see section 2.18 – and may move the auction to the next stage – see section 4.7.

2. For the exercise of waivers, see section 4.20. For suspension of an applicant, see section 4.24.

- (2) Once this happens, the auction is considered closed, and the auction manager must tell all registered applicants of this.
- (3) An automatic re-bid on a lot by a registered applicant when that applicant is the high bidder on the lot from the previous round does not constitute a bid for paragraph (1) (b).
- (4) The exercise of a waiver by the auction manager under subsection 4.20 (5) does not constitute the exercise of a waiver by the bidder for paragraph (1) (c).
- (5) If bidding is continuing after 20 rounds, the auction manager may consider it necessary, to achieve a result, to close the auction at the end of a round he or she specifies (*the specified closing round*).
- (6) Before declaring the specified closing round, the auction manager must:
- (a) at least 2 rounds before the proposed closing time, tell all registered applicants that he or she proposes to close the auction at the end of the specified closing round, and ask for their comments within the time (being not less than 1 hour) set by the auction manager; and

Section 4.28

- (b) take registered applicants' comments on the proposal into account in deciding whether to close the auction ; and
 - (c) if the auction manager decides to close the auction:
 - (i) tell all registered applicants of the specified closing round; and
 - (ii) at the end of the specified closing round, tell all registered applicants that the auction is closed.
- (7) If the auction is closed under subsection (6), the registered applicant who is the highest bidder on a lot at the close of the auction is taken to have made the highest final bid on the lot and to be the successful applicant for that lot.

Part 5 After the auction

5.1 Allocation of licence to highest bidder

- (1) The registered applicant who holds the highest bid on a lot when the auction closes (the *successful applicant*) is entitled to be allocated a licence that includes that lot if the applicant pays the balance of the bid price, worked out under section 5.2, for all lots for which the applicant was the successful bidder, in accordance with section 5.3.
- (2) The licence will take effect on 12 October 2002.

5.2 Calculation of balance of bid price

- (1) The balance of the bid price to be paid by a successful applicant is worked out as follows:
 - (a) the ACA will add up the highest final bids made by the successful applicant;
 - (b) the ACA will add up the value of the bid withdrawal penalties imposed on the applicant under section 4.23;
 - (c) the ACA will add the total of the highest final bids and the total of the bid withdrawal penalties;
 - (d) the ACA will deduct the applicant's eligibility payment from this total.
- (2) The amount remaining is the balance of the bid price.
- (3) If the applicant's eligibility payment is greater than the total of the highest bids and bid withdrawal penalties:
 - (a) the ACA will refund the difference; and
 - (b) the applicant is entitled to be allocated a licence without further payment to the ACA.

5.3 Payment of balance of bid price

- (1) The ACA will notify each successful applicant, by receipted mail, of the balance of the bid price.

Section 5.3

- (2) A successful applicant must pay the balance of the bid price to the ACA as follows:
 - (a) 10% of the balance of the bid price no later than 10 working days after the date of the notice; and
 - (b) the remainder no later than 20 working days after that 10th working day.
- (3) If a notice under subsection (1) contains a material error, the ACA will give the successful applicant a revised notice by receipted mail.
- (4) If the ACA gives a successful applicant a revised notice, the successful applicant must pay the balance of the bid price as follows:
 - (a) if the revised notice is given before the successful applicant has made the 10% payment mentioned in paragraph (2) (a) —10% of the balance of the bid price no later than 10 working days after the date of the revised notice and the remainder no later than 20 working days after that 10th working day; and
 - (b) if the revised notice is given after the successful applicant has made that 10% payment—the remainder of the bid price no later than 10 working days after the date of the revised notice
- (5) The payment of 10% of the balance of the bid price mentioned in paragraph 2 (a) or 4 (a), must be made in full by the specified time in accordance with section 1.9.
- (6) The payment of the remainder of the bid price mentioned in paragraph 2 (b) or 4 (b), must be made in full by the specified time in accordance with section 1.9.

5.4 Default by successful applicant

- (1) If a successful applicant does not pay any part of the balance of the bid price by the time for payment of that part in accordance with section 5.3:
 - (a) the applicant ceases to be entitled to be allocated a licence at the auction; and

Section 5.6

- (b) all highest bids made by the applicant will be treated as withdrawn bids and the applicant will be penalised for those bids in accordance with section 4.23; and
 - (c) any lots so affected will be regarded as defaulted lots and the applicant will be taken to be in default of its financial obligations to the ACA under this determination.
- (2) If the ACA holds a refundable performance payment for a successful applicant who is in default, then so much of the monies held by the ACA as will meet the undischarged liability of the applicant are forfeited to the ACA.
 - (3) Any monies held by the ACA in excess of the undischarged liability of the successful applicant in default must be refunded to the applicant after that liability has been satisfied.
 - (4) However, if a successful applicant remains in default of its financial obligations to the ACA, the amount remaining payable to the ACA is a debt due to the ACA and is recoverable by the ACA from the successful applicant in any court of competent jurisdiction.

5.5 Allocation of defaulted lots

The ACA will treat the defaulted lots as unallocated and offer them for allocation at another time under section 6.1.

5.6 Refunds to unsuccessful applicants

The ACA must account to an unsuccessful applicant:

- (a) for the applicant's eligibility payment less the amount of any bid withdrawal penalties imposed under section 4.23; and
- (b) for money (if any) held by the ACA as a refundable performance payment, less:
 - (i) the balance of any withdrawal penalties not covered by the eligibility payment and
 - (ii) any other monies owing by the applicant to the ACA in timely discharge of its financial obligations under this determination.

Section 6.4

Part 6 Miscellaneous**6.1 Unallocated lots**

A lot offered at an auction but unallocated may be later allocated by the ACA, as the ACA determines:

- (a) by another auction; or
- (b) by tender; or
- (c) by allocation for a pre-determined price or a negotiated price.

Note 1 Unallocated lots include defaulted lots: see section 5.4.

Note 2 The ACA may make determinations under section 60 of the Act about allocations other than by auction.

6.2 Liability of ACA

The ACA is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation procedures set out in this determination.

6.3 Recovery of damages by ACA

This determination is without prejudice to any right of action or remedy which the ACA has or may have against any person which arose or arises under the Deed of Acknowledgment, Deed of Financial Security, statute, common law, equity or otherwise.

6.4 ACA may obtain information from applicants

- (1) This clause applies to an applicant if the ACA has reason to believe that the applicant has information or documents that are relevant to the performance of any of the ACA's functions under this Determination.
- (2) The ACA may, by written notice to an applicant, require the applicant:
 - (a) to give to the ACA, within the period and in the manner and form specified in the notice, any such information;

Section 6.7 Refunds of payments under Deed of Financial Security

- (b) to produce to the ACA, within the period and in the manner specified in the notice, any such documents.
- (3) An applicant must comply with a requirement under subsection (2).

6.5 Giving of information by ACA

Before the ACA allocates a licence, it may announce, or publish a notice of:

- (a) the name of the person to whom the licence is to be allocated; and
- (b) the highest final price bid for the lots included in the licence, or the pre-determined price for the licence, as appropriate.

6.6 Information provided by applicant

- (1) An original document given to the ACA by a person for the purposes of the allocation system set out in this determination (including a document that contains intellectual property) becomes the property of the ACA.

Note Subsection (1) does not apply to a document that establishes an individual's identity.

- (2) The ACA may use information provided by an applicant for the purposes of the ACA.

6.7 Refunds of payments under Deed of Financial Security

Where an amount paid under a Deed of Financial Security is refundable under this Determination, the ACA must pay that amount to the applicant, or the withdrawn applicant, who gave the ACA the Deed of Financial Security under which the payment was made.

Schedule 1 Procedures for bid transmission (including automatic re-bids and withdrawal of bids) and authentication

(sections 4.9, 4.10 and 4.11)

The aim of these procedures is to ensure that information purporting to represent the instructions of a registered applicant during bidding has actually come from that registered applicant.

1. Connection to the auction computer system

Each registered applicant will connect with the auction computer system through the ACA's public network interface using a telephone number supplied to registered applicants by the auction manager, or by the internet.

To log on using a telephone connection, the applicant will need to supply a user ID and password.

Once connection is established, the registered applicant will be able to:

- (a) download from the auction computer system a file containing auction results from the auction computer system; or
- (b) upload to the auction computer system its bid file during a round.

A registered applicant may need to connect a number of times during a round:

- (a) to make bidding instructions; or
- (b) to obtain results after the bidding period.

The auction schedule will provide information to registered applicants about when to make these connections.

2. Encryption of Files for Transmission

The ACA will use 'public key' encryption to secure the privacy and integrity of each registered applicant's bid file as it is transmitted to the ACA. Public key encryption also offers scope to provide sophisticated digital authentication procedures for files that are mathematically improbable to compromise.

Note Public key encryption works on the basis of 2 complementary keys (very large numbers). The 2 keys are mathematically related, but in a way that cannot be easily deduced. One key must be kept private, while the other can be made public. A message encrypted with 1 part of the key pair can ONLY be decrypted with the other part.

Public key cryptography is implemented by users freely distributing their public key, so that other people can encrypt messages to them with that key. The message can then only be decrypted using the person's private key which the person alone holds and which the person must protect.

For the auction, the ACA will provide all pairs of encryption keys. Each registered applicant will be given a copy of the ACA's public key and a copy of the applicant's own private key. The ACA will retain a copy of all public and private keys distributed in the auction.

The ACA will store encryption keys under appropriate security arrangements in the auction centre.

The ACA will specify 1024 bit keys.

3. Bidding instruction files

Each bidding instruction file will be prepared in the form of a database following the Microsoft Access 97 specification. Before transmission, the file will be digitally signed. The signature will then be encrypted with the registered applicant's private encryption key.

Note The digital signature will be calculated by a checksum algorithm that calculates a 128 bit number expressing the whole file. It is so sensitive that the change of a full-stop to a comma will result in a substantially different checksum.

The file itself will then be encrypted using the ACA's public encryption key. The file and the attached signature will then be transmitted to the auction computer system.

On receipt of the file by the auction computer system, the ACA's auction software will automatically decrypt the file that has been received using the ACA's private encryption key. It will recalculate the digital signature of the file received, decrypt the digital signature attached to the file with the registered applicant's public encryption key and compare the 2 signatures. An exact comparison between the received signature and the private encryption signature will indicate that it is highly unlikely that the file has been intercepted or corrupted during transmission.

Once a file has been received and authenticated, the ACA auction computer system will generate a receipt and transmit it to the registered applicant over the connection while it is held open.

A bidding instruction file bearing an authentic signature, prepared with one of the encryption keys provided by the ACA to a registered applicant, will be taken by the ACA as having originated from that registered applicant and from no other person.

Any bidding instruction file that is not in the format described above will not be accepted for processing under any circumstances.

Note In the Deed of Acknowledgment, each applicant will acknowledge that the mechanisms described above and implemented by the ACA are acceptable to authenticate a bid, and that they will be bound by any bid in a bid file that passes the authentication checks using the key provided to them, until they notify the ACA that their keys may have been compromised.

4. Key handling

When an applicant is registered to participate in an auction, the ACA will assign a 4 digit bidder identification number and a randomly generated 8 character password.

The ACA will generate an encryption key pair for the registered applicant, using a pass-phrase mathematically derived from the registered applicant's password. The private part of the encryption key pair will be copied to a floppy disk and distributed to the registered applicant, together with the bidder identification number and password. These materials will be distributed by receipted mail or safe-hand courier to the address nominated by the applicant.

5. One-time transaction code keys

For each registered applicant, the ACA will prepare a list of ‘one-time’ transaction code keys for use by that registered applicant only in authenticating its telephone bids should this be required in an emergency.

Each list will contain a minimum of 100 transaction code keys. No two lists will be the same. No two codes will be the same, except as generated by chance.

Each key will consist of 8 randomly generated letters. The case of the letters will not be significant to their use.

Each key will be used once, in the order in which the keys are listed. The ACA will retain a copy of each list and identify that list as having been issued to the registered applicant.

6. Using Transaction Code Keys

Registered applicants bidding by telephone must identify themselves, to the ACA operator using the next available transaction code key when asked.

Once a transaction code key is used, the registered applicant will strike through that key on the list and note the round and the date and time that it was used.

When the ACA is contacted by a registered applicant wanting to make bidding instructions, the ACA will authenticate the instructions using the transaction code key by:

- (a) looking up the list of keys for that registered applicant; and
- (b) comparing the key provided by the registered applicant with the next available key on the list.

If the key matches, the instructions will be regarded as authentic.

Once a transaction code key is used by a registered applicant, the ACA will note the round and the time and date that the key was used.

Registered applicants may not re-use a transaction code key or use a key other than the next key in the sequence. Any other key will be regarded as invalid. Any communication containing an invalid key will be ignored. The ACA will advise the registered applicant by telephone that the communication has been ignored, and may suspend the registered applicant's participation until new transaction code keys can be delivered.

7. Distributing Encryption and Transaction Code Keys

Encryption and transaction code keys will be distributed by receipted mail or safe-hand courier to the address nominated by the applicant.

If the registered applicant has any suspicion that the integrity of the keys have been compromised in transit, it must advise the ACA immediately so that new keys can be prepared. Depending on the nature of the tampering, replacement keys may be forwarded by receipted mail or by safe-hand courier to the address nominated by the applicant. They may also be held for collection at an ACA office, where they may be collected by the person nominated by the registered applicant as the contact person for the auction on presentation of the following evidence of identity (one of which must include the signature of the person presenting the identification):

- (a) photographic evidence, being a driver's licence or passport; or
- (b) 2 forms of other identification (such as a birth certificate or credit card).

8. Storing Encryption and Transaction Code Keys

Registered applicants will be responsible for protecting the encryption and transaction code keys from unauthorised use.

The ACA will protect its copy of each registered applicant's keys by appropriate internal security arrangements. The ACA will restrict access to the area where the keys are being used to authenticate bids to all but persons authorised by the ACA or escorted by a person authorised by the ACA.

If a registered applicant discovers that its encryption or transaction code keys have been compromised (through break-in, unauthorised access or any other reason), the registered applicant must immediately inform the ACA. The ACA will then prepare new keys for that registered applicant and forward them to the registered applicant.

The ACA may at any time issue new encryption and transaction code keys to a registered applicant, or to all registered applicants, if it comes to believe that the integrity of the auction may have been compromised.

Applicants must use the new keys.

In the period between a registered applicant notifying the ACA that the keys have been compromised and the ACA providing the registered applicant with replacement keys, the registered applicant's participation in the auction will be suspended, without incurring a waiver.
